



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 33 of the Housing (Scotland)
Act 1988**

Chamber Ref: FTS/HPC/EV/26/0019

Re: Property at 1 Waterside Court, Kilmarnock, KA1 1RR (“the Property”)

Parties:

Mrs Lillian Nisbett-Baldwin, 71 London Road, Kilmarnock, KA3 7BP (“the Applicant”)

Mr Kenny McClune, 1 Waterside Court, Kilmarnock, KA1 1RR (“the Respondent”)

Tribunal Members:

Fiona Stephen (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction be granted.

Background

1. By application dated 5 January 2026 the Applicant sought an order under section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”) and in terms of rule 66 of the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the Rules”).
2. On 27 January 2026 the Application was accepted by the Tribunal.
3. A Case Management Discussion (CMD) was arranged to take place on 14 July 2026 at 10am. Appropriate intimation of that hearing was given to both parties. The Respondent was served with intimation of the CMD, together with the papers by Sheriff Officers on 11 June 2026 in accordance with execution of service of the same date. Written representations were due to be lodged by the Respondent no later than 30 June 2026. No representations were lodged.

4. The CMD took place on 14 July 2026. The Applicant was represented by Ms Clark of The McKinstry Co, Solicitors, Ayr. The Tribunal delayed the start of the CMD for a few minutes to see if the Respondent would attend. There was no attendance by the Respondent.
5. The Tribunal had before it:
 - i. Short Assured Tenancy agreement dated 14 January 2016 between the Applicant and the Respondent, commencing on 18 January 2016 for 6 months and continuing from month to month thereafter until terminated;
 - ii. AT5 Notice dated 14 January 2016;
 - iii. Notice to Quit dated 15 September 2025 ending the tenancy on 17 November 2025;
 - iv. Section 33 Notice dated 15 September 2025 stating that possession of Property was required on 17 November 2025;
 - v. Proof of service of iii and iv by Sheriff Officers dated 16 September 2025;
 - vi. Section 11 Notice dated 5 January 2026 with proof of service;
 - vii. Application in Form E dated 5 January 2026; and
 - viii. Case Papers.

Case Management Discussion

6. The Tribunal asked various questions of the Applicant's representative with regard to the application. Ms Clark advised that she wished to update the Tribunal on the Applicant's circumstances. She had lodged an Inventory of Productions with the Tribunal in advance of the CMD. Unfortunately, this had not been sent on to the Tribunal members. Ms Clark explained that the Inventory comprised a letter from the Applicant and some copies of text messages between the Applicant and Respondent.
7. The Tribunal confirmed it was content for Ms Clark to set out what was in the letter. Ms Clark explained that the Applicant had a portfolio of six properties of which this Property was one. She intends to sell the properties as a portfolio which means the Applicant will benefit from a reduced ADS supplement.
8. In July 2024, the Applicant had someone interested in buying the Property with the Respondent as a sitting tenant. However, following an inspection of the Property the prospective buyer advised that they did not want to proceed due to the condition of the inside of the Property. The Respondent has known that the Applicant intends to sell the Property since July 2024.
9. The Applicant's husband is receiving palliative care and is home on respite at present. The Applicant wishes to organise her affairs and retire. Ms Clark did not know what the position was with the Applicant's other properties in terms of whether there were also sitting tenants in those.

10. Ms Clark was unable to provide any significant information relating to the Respondent. He refuses to engage with the Applicant. He lives on his own in the Property which is a one bedded flat.
11. Following conclusion of the CMD, the Tribunal members were sent the Inventory of Productions referred to above. This confirmed what had been set out above other than the Applicant stated that her husband's poor health and the ongoing stress of managing her properties was impacting her own well-being. The copy text messages between the Applicant and Respondent were dated between 8 May and 31 August 2024 and confirmed that the Respondent had not engaged with her.

Findings in Fact

12. The Applicant and the Respondent entered into a short assured tenancy agreement which commenced on 18 January 2016.
13. The tenancy was for the period of 6 months from 18 January 2016 and continued on a month to month basis thereafter until terminated;
14. An AT5 Notice dated 14 January 2016 had been given to (and signed) by the Respondent.
15. A Notice to Quit dated 15 September 2025 was served on the Respondent by Sheriff Officers on 16 September 2025 stating that the tenancy would terminate on 17 November 2025.
16. A Notice in terms of Section 33 of the 1988 Act dated 15 September 2025 was served on the Respondent by Sheriff Officers on 16 September 2025 stating that possession of the Property was required on 17 November 2025.
17. The tenancy reached its *ish* on 17 November 2025 and is not continuing by tacit relocation.
18. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003.

Findings in Fact and Law

19. It is reasonable to grant an order for possession of the Property.

Reasons for Decision

20. The Tribunal determined to make an Order for possession of the Property in terms of Section 33 of the 1988 Act. The Tribunal noted that the tenancy had been properly created as a short assured tenancy and that a Section 33

Notice and Notice to Quit had been served on the Respondent giving two months' notice that the Applicant required possession of the Property.

21. Having considered all of the circumstances, and in light of the lack of opposition from the Respondent, the Tribunal determined that it was reasonable to issue an eviction order.
22. The Tribunal also exercised the power within Rule 17 of the Rules and determined that a final order should be made at the CMD.

Decision

The Tribunal grants an Order for possession of the Property.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

**Fiona Stephen
Legal Member/Chair**

**14 July 2026
Date**